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| 09/651,127      | 08/30/2000  | Petter Bragd         | 010315-089          | 1058             |

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EXAMINER

WEBB, JAMISUE A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3761

DATE MAILED: 02/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/651,127

Applicant(s)

BRAGD ET AL.

Examiner

Jamisue A. Webb

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-11 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6 and 11, drawn to an absorbent structure, classified in class 604, subclass 369.
  - II. Claims 7-10, drawn to the method of making the article, classified in class 264, subclass 45.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions the absorbent structure and the method of making the absorbent structure are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the absorbent structure can be made by forming the first layer, then forming the second layer, compressing each layer, then cross-linking or adhering each layer together. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3. This application contains claims directed to the following patentably distinct species of the claimed invention: If the method is chosen then:

- a. Claim 8 is drawn to a distinct species

- b. Claim 9 is drawn to another independent and distinct species
- c. Claim 10 is drawn to another independent and distinct species.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 7 is generic to the method.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. During a telephone conversation with William Rowland on 1/25/02 a provisional election was made with traverse to prosecute the invention of the absorbent structure, claims 1-6 and 11. Affirmation of this election must be made by applicant in replying to this Office action. Claims

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7-10 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### *Priority*

6. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Sweden on 8/30/99. It is noted, however, that applicant has not filed a certified copy of the Swedish application as required by 35 U.S.C. 119(b).

#### *Claim Rejections - 35 USC § 112*

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Regarding claims 1, 5 and 11, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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10. With respect to Claim 1: the applicant has claimed "two integrated layers" yet has indicated in parenthesis, three reference numerals (2,3,4). It is unclear if there is two layers or three layers.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 1-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rezai et al. (5,713,881) in view of Cohen et al. (5,728,083).

14. With respect to Claims 1, 2, 6 and 11: Rezai discloses an absorbent structure used in a such things as a diaper or incontinence guard (column 1) that has multiple integrated layers (see figures 1-6), in which has one layer (72) made of an cellulosic foams (column 20, line 36), and another layer (71) which is a mixture of an absorbent foam and a superabsorbent material.

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(column 11, lines 57-62). Rezai discloses the absorbent structure being compressed and expands when wet (column 37, lines 54-57).

15. Rezai discloses controlling the pore size of the cellulosic layer, however does not disclose the use of each layer being of differing pore sizes. Cohen, discloses the use of a multi-layered absorbent article where each layer has an average pore size no greater than the layer immediately proceeding it toward the liquid accepting surface (column 4, lines 20-23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the layers of Rezai, impart a lower average pore size then the layer directly above, in order to improve the sequestering of liquids within the absorbent structure. (see Cohen, column 4).

16. With respect to Claim 3: Rezai discloses the substrate layer has zero superabsorbent, and the second layer being a mixture of foam and superabsorbent, therefore different amounts.

17. With respect to Claim 4: Rezai discloses the substrate layer being a layer on top of the absorbent foam and superabsorbent layer, and Cohen discloses the pore size decreasing from top to bottom. Therefore, when the substrate layer is on the bottom of the absorbent foam and superabsorbent layer, then the absorbent foam and superabsorbent layer (which contains more superabsorbent material then the substrate layer, which has none) has a larger pore size. When the substrate is on the top of the absorbent foam and superabsorbent layer, then the absorbent foam and superabsorbent layer, which contains the greatest amount of superabsorbent, has the smallest pore size.

18. With respect to Claim 5: See Rezai, column 21, lines 24-25.

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***Conclusion***

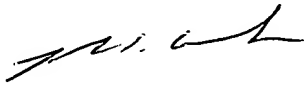
19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Trombetta et al. (5,785,697) and Carlucci et al. (6,191,340) disclose multilayered absorbent foam articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw   
January 31, 2002

  
John G. Weiss  
Supervisory Patent Examiner  
Group 3700